Supreme Court, U.S
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No.2 06-943

# IN THE SUPREME COURT OF THE UNITED STATES

**********

Robert E. Brown and
Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

**********

**ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COUR OF APPEALS FOR THE THIRD CIRCUIT**

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## PETITION FOR WRIT OF CERTIORARI

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**Finger & Slanina, LLC**
David L. Finger
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801-11
(302) 884-6766
David M. Souders
Sandra L. Brickel
Weiner Brodwky

**Rizzo Reger &, LLP**
Carol J. Antoff, Esq.
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302) 652-3611
Attorneys f or Petitioners

---

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## QUESTIONS PRESENTED

1. Did the decision emerging from the court of appeals conflict with U. S. Supreme Court's ruling in; Denver A. Youngblood, Jr. v. West Virginia, 126 S. Ct. 2188; and Third Circuit Court of Appeals decision in; Nationwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc., and Chan, 175 Fed. App. 519, 2006 U.S. App?
2. Did this deprive Robert E. and Shirley H. Brown rights of substantive due process and Equal protection of the 5th and 14th Amendments of the United States Constitution and Federal Rules of Civil Procedure?
3. Is the United States Supreme Court's review warranted based on the U.S. District Court and Third Circuit Court of Appeals erroneous application of established law, by applying different and vague rationales in reaching their October 17, 2006 opinion?

## TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW..... i

TABLE OF CONTENTS ..... ii

TABLE OF CITED AUTHORITIES ..... iii,iv

TABLE OF APPENDICE ..... iv

OPINIONS BELOW ..... 1

BASIS OF SUPREME COURT JURISDICTION ... 2

STATEMENT OF THE CASE AND BASIS OF JURISDICTION ..... 2,3

REASONS FOR GRANTING THE WRIT ..... 3,4

UNITED STATES DISTRICT COURT ..... 4,5,6

APPEAL TO THIRD CIRCUIT COURT .....6,7

THIRD CIRCUIT OPINION CONFLICT .....7,8,9,10

SUPREME COURT CASE CONFLICT ..... 10-11,12

CONCLUSION ..... ..12-13

## TABLE OF CITED AUTHORITIES

Page

*Cases Cited*

Nationwide Insurance Company v. Starlight Ballroom Dance Club. ; Chilip Chan, 175 Fed. App. 519, 2006 U.S. APP..... ...2,7,8,9,10,11,12,13

Denver A. Youngblood, Jr. v. West Virginia, 126 S. CT. 2188, 2006 U.S.; 165 L. Ed. 2d 269.....2,7,8,10,11,12,13

*Constitutional Provision*

5th Amendment ..... 7
14th Amendment ..... 7

*Statutory Provisions*

Supreme Court Rule 10 ..... 2

3 Cir. LAR.Rule 34 ..... 8
3 Cir. LAR Rule 35 ..... 8

15 USC 1691 e, (b), (c), (d).
§706. a. (b), (c), (d) Appendices
28 USC 1332 .....Appendices
28 USC 1391, a, (e) ..... Appendices
28 USC 1441 .....Appendices
42 USC 1983 ..... 7
42 USC 1985 ..... 7

*Federal Regulation*

12 CFR 202.4, (a), (b) ..... Appendices

*Federal Rules of Civil Procedures*

FRCP Rule. 6, (d) ..... 4
FRCP Rule. 7, 1, (a), (b) ..... 4,7
FRCP Rule. 11..... 4,9,10
FRCP Rule. 12..... 4,9,12

**APPENDIX**

Pages

A. United States District Court for the District of Delaware, January 12, 2006 ..... 1-20

B. Third Circuit Court of Appeals Ruling of August 17, 2006..... 21-29

C. Third Circuit Court of Appeals Rehearing En banc denied. September 18, 2006 ..... 30-31

IN THE
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---

Robert E. Brown and Shirley H. Brown h/w
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v.

Interbay Funding LLC, and Legreca and
Quinn Real Estate Services Inc.
Respondents

---

## OPINIONS BELOW

[X] for cases from federal courts:

The opinion of the United States Court of appeals appears at Appendix and it the petition and is unpublished.

[X} the opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

## JURISDICTION

[X] for cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 17, 2006.

[X] A Timely petition for rehearing was denied by the United States Court of Appeals for the Third Circuit on September 18, 2006. A copy of the order denying the Rehearing Enbanc appears at Appendix B.

## STATEMENT OF BASIS OF SUPREME COURT JURISDICTION

The Supreme Court acquires jurisdiction base on Supreme Court Rule 10, (a), (b), and (C).

## STATEMENT OF THE CASE AND BASIS OF JURISDICTION

This case is based on the violations of FRCP, Constitutional provisions of the United States Constitution, and Third Circuit Court of Appeals and United States District Court, decisions that conflict with Supreme Court decisions in Youngblood v. West Virginia, and Nationwide Mutual Ins. v. Starlight Ballroom established case law. References to these two cases are cited in the Table of Contents pages i through iv, and supportive In Appendices.

This Appeal is being taken to prevent a miscarriage of justice by our judicial system. It stands to prove that the safeguards that were put in place by the Treaties the founders of our nation establish the rights of all sovereign men. These founders constructed a living document said to be the most important document of this nation, named the Constitution of the United States of America.

This Document was formulated for the purpose of giving guidance to our three forms of government, based on the doctrine of "STARE DECISIS" - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.

**REASON FOP GRANTING THE WRIT**

This case is an Appeal from the United States District Court for the District of Delaware, based on the abuse of discretion by District Court Judge Sue L. Robinson ruling of Summary Judgment in favor of the Defendants Interbay Funding LLC and Legreca and Quinn Real Estate Services Inc.

Plaintiffs Robert E. Brown and Shirley H. Brown h/w appealed the Judgment of Judge Sue L. Robinson entering of the Summary Judgment based on Judge Sue L. Robinson's abuse of discretion.

Robert and Shirley Brown states that Judge Robinson abused her discretion, when she;

1. Fail to fully and fairy develop the record by allowing Defendants Interbay Funding LLC to allow not to give

en notice of Interbay Motion to Dismiss as mandated by FRCP Rule 7, (b),

2. Rejecting evidence that Interbay did not answer the Summons and Complaint until 120, plus days after being served with the Summons and Complaint.

3. Failing to grant Robert and Shirley Browns Motion for Default Judgment without applying the United States District Court three standard rule test of;

(a) The Plaintiffs being prejudiced.

(b) Did the Defendants present a meritorious?

Defense?

(c) Failing to consider FRCP Rules 6, (d), 7, 1,

(a), (b).

(d) Failing to give proper consideration to

Rebutted evidence of non-compliance of FRCP rules 6, (d), and 7, 1, (a), (b), Rule 11, 1, 2, 3, (a), (b), and 12.

Culminating in perfect description of Judge Sue L. Robinson abuse of discretion.

**UNITED STATES DISTRICT COURT**

Plaintiffs, Robert E. Brown and Shirley H. Brown, herein after referred to as Robert and Shirley, filed suit on

the Defendants, Interbay Funding LLC, and Legreca and Quinn Real Estate Services Inc, herein after referred to as Interbay and Legreca and Quinn, on June 28, 2004, in the United States District Court for the District of Delaware.

The case was presided over by United States District Court, Judge Sue L. Robinson.

Robert and Shirley Browns' Summons and Complaint were served on Interbay and Legreca and Quinn by Special Process server's employees of Parcels Inc. on June 29, 2004.

On July 19, 2004 Legreca and Quinn filed a timely Answer to Robert and Shirley H. Browns Summons and Complaint and appear on the District Court as Docket # 7, dated entered: 07/19/2004.

Interbay filed a timely Motion to Dismiss, Robert and Shirley Browns Summons and Complaint, and it appears on the District Court as Docket # 8, dated entered 07/19/2004.

Robert and Shirley Brown were not given any notice in writing of the date and time of a hearing of Interbay Motion to Dismiss as mandated by FRCP 7, (b) Pleadings Allowed: Forms of Motions.

Interbay, filed an answer to the Summons and Complaint as it appears on the District Court Docket # 36, dated: 11/22/2006.

On 11/30/2004, Robert and Shirley Brown filed a Motion for Default Judgment.

District Court Judge Sue L. Robinson, denied Robert and Shirley Browns Motion for Default Judgment, and it appear on the District Court Docket # 45 dates entered: 12/20/2004.

District Court Judge Sue L. Robinson, entered Judgment against Robert and Shirley Brown, in favor of Defendants Interbay and Legreca and Quinn and it appears on the District Court Docket # 104 dates entered: 01/12//2006.

**APPEAL TO THE THIRD CIRCUIT COURT**

On February 17, 2006, Robert and Shirley Brown Appealed to the Third Circuit Court of Appeals, from the January 12, 2006 Judgment, raising the issues of judicial abuse of discretion on the part of District Court Judge Sue L. Robinson.

Robert and Shirley Browns raised the issues of fact that the Third Circuit Court of Appeals Lacked Jurisdiction over the person of Interbay, and that Legreca and Quinn, had impeached themselves in their responses to Rule 33 Interrogatories.

**THIRD CIRCUIT OPINION, CONFLICTS**

1. The Third Circuit Court of Appeals Opinion of August 17, 2006, by Judges Sloviter, Smith, and Van Antwerpen filed August 18, 2006, conflicts with Nationwide Mutu. Ins. Co. v. Starlight Ballroom Dance Club, Inc., March 14, 2006, Opinion by: AMBRO, Circuit Judge. Before: Ambro, Stapleton, Circuit Judges, Stagg, District Judge, designation.

2. The Third Circuit Court of Appeals August 18, 2006, conflicts with Denver A. Youngblood, Jr. v. West Virginia 126 S. CT. 2188, 165. Ed. 2d. 269, 2006.

3. These violations violate Robert and Shirley Browns of "Due Process and Equal Protection under the Law" of the 5th and 14th Amendments of the United States Constitution of titles 42 USC 1983 and 42 USC 1985.

4. The Third Circuit Court of Appeals Error when it failed to apply established case law Nationwide Mutu. Ins. Co. v. Starlight Ballroom and Youngblood v. West Virginia and then denying, Robert and Shirley Browns Motion he Browns correctly not for Rehearing En Banc pursuant to Third Circuit Court of Appeals Rules 34, and 35 by applying an erroneous and irrational application of law.

In Nationwide Mutual Ins Co. v. Starlight, Ballroom (3 Cir.), Starlight Ballroom, failed to respond to the Summons and Complaint for a period of 120 days, Nationwide Insurance filed for Default Judgment, and served on Starlight Ballroom, and they failed to answer the written Notice of the Motion for Default Judgment.

The presiding Judge in his deliberation of Nationwide Mutu. Ins. Co. Motion for Default Judgment considered three factors. The first factor was; would the Plaintiff be Prejudiced? Second factor was; did the Defendant have a meritorious defense? And third; was the Defendants failure to respond due to his own culpability?

The presiding Judge found that Starlight Ballroom had not responded to the written notice of the Default and

Judgment and granted the Default Judgment against Starlight Ballroom, who had not responded to the Summons and Complaint during a 120 day period.

The conflict of applicability of the similarities of the Robert E. Brown and Shirley H. Brown Case to the Nationwide Mutual Insurance Co. v. Starlight Ballroom case law, are the following fact.

In the case of Robert and Shirley Brown h/w, v. Interbay and Legreca and Quinn case, The Browns filed their Summons and Complaint on June 28, 2004 which was too answered by Interbay and Legreca and Quinn, by July 19, 2004.

On July 19, 2004 Interbay filed a timely Motion to Dismiss pursuant to FRCP 12, without giving a written Notice of the time and date for the hearing of the Motion to Dismiss, as mandated by FRCP Rule 7, (b).

The Third Circuit Court of Appeals error in its Opinion of August 17, 2006 on page 3 starting at line 15;

" Interbay timely filed a motion to dismiss pursuant to Rule 12(b) (6). See DKT. #8. Interbay's motion was not a "substitute" for an answer. Rather, the motion merely

extended Interbay's to file an answer until 10 days after receiving notice of the district Court's action on its motion." The Court of Appeals did not consider the fact that the filing of a Motion to Dismiss, under FRCP Rule 7, (b) MOTIONS AND OTHER PAPERS, a written notice of the time of the hearing, of which Robert and Shirley Brown never received.

Legreca and Quinn filed a timely answer to the Summons and complaint on the prescribed date of July 19, 2004 as is required by FRCP Rule 7.

There after Interbay did not file an answer to the Summons and Complaint until November 22, 2004, which is a period of 120 days.

**CONFLICT WITH SUPREME COURT UNITED STATES OPINION**

In Youngblood v. West Virginia, the United States Supreme Court held that, the State of West Virginia, Prosecutor abuse of discretion when he disregarded evidence. Police submitted proof of the victim of an alleged rape case admitted in a hand written note that the sex act was consensual but the Prosecutor did not allow it as

evidence that would clear the alleged perpetrator of the charge of rape.

We find similarity in Youngblood v. West Virginia in that Robert and Shirley Brown v. Interbay and Legreca and Quinn case, Judge Sue L. Robinson gave no regarded to Robert and Shirley Browns Motion for Default Judgment, applied an irrational and erroneous reasoning of facts that Interbay had not responded to the Summons and Complaint in a period of 120 days.

Judge Sue L. Robinson, abused her discretion in that she failed to apply the three factors district court judges are required to apply to the Default Judgment test, of Prejudice, Merit and Culpability, holding in Youngblood v. West Virginia, by the U.S. Supreme Court and Nationwide Insurance Co. v. Starlight Ballroom, holding in Third Circuit Court of Appeals decisions.

**CONCLUSION**

We conclude that the weight of these facts presented is based on the laws of the Constitution of these United States and its judicial system is to administer the Justice.

The facts are that Robert and Shirley Brown were denied their rights of due process and equal justice of the laws in the preceding case of Robert and Shirley Brown v. Interbay and Legreca and Quinn.

The denial by District Court Judge Sue L. Robinson abuse of discretion, allowed Interbay to violate FRCP Rule 7, 1, (a), (b), by not requiring Interbay to answer Robert and Shirley Browns Summons and Complaint in the time mandated by FRCP Rule 7.

Judge Sue L. Robinson, abused her discretion when she failed to apply U.S. District Courts three deciding factors of Prejudice, Merit and, Culpability, in deciding Robert and Shirley Browns Motion for Default Judgment.

The Third Circuit Court of Appeals error in their Opinion of Robert and Shirley Browns Appeal when it failed to apply the doctrine of case law, "Stare Decisis" provide by Nationwide Insurance Co. v. Starlight Ballroom, and Youngblood v. West[1] Virginia. The

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[1] **STARE DECISIS - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.**

Court of Appeals did not consider the fact that the filing of a Motion to Dismiss, under FRCP Rule 7, (b) MOTIONS AND OTHER PAPERS, a written notice of the time of the hearing, of which Robert and Shirley Brown never received.

Robert E. Brown, Pro, se

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington, DE. 19801
(302) 652-9959

Notary Public

CHERYL EMORY
Notary Public - State of Delaware
My Commission Expires July 17, 2010

IN THE

**SUPREME COURT OF THE UNITED STATES**

Robert E. Brown and Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca and
Quinn Real Estate Services Inc.
Respondents

CERTIFICATE OF SERVICE

This is to certify that on this 2 day of January 2007

This notice of Writ of Certiorari was served on the

Following lawyers:

David L. Finger Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801-11
(302) 884-1666
(302) 884-6766

David M. Souders
Sandra L. Brickel
Weiner Brodwky
1300 19th Street
Suite 725
Washington, DE
20036-1609
(202) 884-2000
(202) 628-2011

Carol J. Antoff, Esq.
Reger & Rizzo, LLP
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302) 652-6366

Robert E. Brown, Pro Se.

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington DE. 19801
(302)652-9959

# APPENDICES

**Exhibit A**

IN THE UNITE STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| Robert E. Brown and H. Brown h/w, Plaintiffs. | ) | |
| v. | ) | Civ. No. 04-617-SLR |
| Interbay Funding, LLC Lagreca & Quinn Real Estate Services, Inc. Defendants | ) | |

**ORDER**

For reasons stated in the court's memorandum opinion and order of January 11, 2006;

It is ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of defendants Interbay Funding, LLC and Lagreca & Quinn Real Estate Services, Inc. and against plaintiffs Robert E. Brown and Shirley H. Brow.

/S/_____
United States District Judge

Date: January 12, 2006

/S/_____
(by) Deputy Clerk

**Exhibit A-1**

IN THE UNITE STATES DISTRICT COURT FOR
THE
DISTRICT OF DELAWARE

| | | |
|---|---|---|
| Robert E. Brown and | ) | |
| Shirley H. Brown h/w, | ) | |
| Plaintiffs. | ) | |
| v. | ) | Civ. No. 04-617-SLR |
| Interbay Funding, LLC, and | ) | |
| Lagreca & Quinn Real | ) | |
| Estate Services, Inc. | ) | |
| Defendants | ) | |

Robert E. Brown and Shirley H. Brown, Wilmington,

Delaware. Pro Se.

David L. Fringer, Esquire of Finger & Slanina, Wilmigton,

Delaware, Counsel for Defendant Interbay Funding, LLC. Of

Counsel: david M. Souders and Sandra L. Brickel of Weiner

Brodsky Sidman Kider, Washington, D.C,

Carol J. Antoff, Esquire of Reger & Rizzzo, Wilmington,

Delaware. Counsel Defendant Legreca & Quinn Real Estate

Services, Inc.

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**MEMORANDUM OPINION**

Date: January 11, 2006
Wilmington, Delaware
Robinson, Chief Judge

**Introduction**

[1]On June 28, 2004, plaintiffs Robert E. Brown and Shirley H. Brown filed this action against defendants Interbay Funding, LLC ("Interbay) and Legreca & Quinn Real Estate Services ("Legreca & Quinn") alleging discrimination in violation of the Equal Credit Opportunity Act ("ECOA"), 15 USC §§ 1691 et. seq.; and the Fair Housing Act, 42 USC §§ 3601 et seq. ; negligence; fraud; violations of the Federal Institutions reform, Recovery, and Enforcement Act ("FIRRA"), 12 U.S,C. §§ 1331 et. seq. : and violations of the Uniform Appraisal Standards of Professional Appraisal Practice. (D.I. 1) Pending before the court are cross motions for summary judgment (D.I. 74, 75, 78), and Legreca & Quinn's motions to strike plaintiffs'

---

Although the parties and court documents reference "Legreca" letters from this defendant reflects the spelling as "Lagreca." (See e.q. D.I. 93 at ex. D) For purposes of this proceeding, the spelling is inconsequential and references are to the identical party.

affidavits. (D.I. 91, 92) For the reasons that follow, defendants' motions for summary judgment are granted and plaintiffs' motion for summary judgment is denied.

**II Background**

On March 11, 20004, plaintiffs contracted to purchas three parcels of property located at 2617-2619-2625 Market Street, Wilmington, Delaware ("the Property"). (D.I. 1) The properties had been on the market for approximately seven years and the sale prices was $128, 000. (D.I. 76 at ex. 1, p. 3) on parcel contains a two-story , semi-detached commercial building, the other two are paved parking lots. (D.I. 11 at ex. A) The Building is a dwelling built in 1915, that has been converted into a beatuty salon. Id. Plaintiffs intended to use the commercial property to expand their restaurant business. (D.I. 9 at 4).

Plaintiffs applied for a mortgage loan through Janet Madrick, brokerfor Sunset Mortgage Company. (Id.) A loan application was then submitted to Interbay, the

mortgage lender. Inerbay approved the loan application subject to an appraisal of[2]

The property, to assure that there was sufficient collateral for the loan. Id. Interbay contracted with Legreca & Quinn to perform the appraisal. (Id. At ex. A) The agreement required plaintiffs to pay $2,5000. for the appraisal.

Based on other properties within the same zip code, $200,000 range." (D.I. 1 at 3) Robert C. Lagreca, a certified General Property Appraiser certified t\by the state of Delaware and the

---

[2] Plaintiffs own and operate the Walnut Street Deli ("Deli"). (D.I. 1 a(2) According to the complaint, plaintiffs attempted to purchase the property in issue to expand the Deli business to a location that provided consumer parking and, in turn, had the potential to increase revenue. (Id. at 9)

'The agreement of sale lists the selling price as $128,000. (D.. 52m 53, 1) In addition to contracting to purchase the property in issue, plaintiffs "had also contracted to purchase 2627 Market Street, to expand their operation into an Eat –In Restaurant and Banquet Room .by adjoining the 2525 and 2527 first floors through previous entrances that existed in those two adjoining buildings." (D.I. 73, ex. 1 at 5

Commonwealth of Pennsylvania, performed the appraisal. (D.(. 87, 74 ) He describes his methodology as follows:

The subject property was appraised as one commereial unit consisting of the two story dewelling convérted into commercial use wit on-sie parking.

It is the usual, customary and accepted practice in the business of real Estate a Appraisal to appraise a single unit of commercial property located on several tax parcels by valuing each tax parcel separately. The appraisal f the subject property as a commercial building on-site parking conforms with the USPAP and the SPAP.

(D.I. 74, ex. A) As a result, Legreca & Quinn produced an appraisal report which valued the property at $140,000. (D.I. 26, ex. A) After the appraisal, Interbay adjusted plaintiffs, mortgage calculation, agreeing to finance 65% of the purchase price instead of 80% and requiring plaintiff to make a down payment of 35% of the purchase price instead of the 20%. (ID.)

After learning that the terms of the mortgage had changed, plaintiffs had their bank rescind the $2500, that had been

transferred to Legreca & Quinn because they disputed the accuracy of the appraisal. (D.I. 1 at 4)

Plaintiffs alleged that Legreca & Quinn only appraised one of the lotsand compared the property to those outside the appropriate area. (D>I. 11 at *; D.I> 9 at 5)

Initially, Interbay agreed to have all thrr parcels reappraised based on plaintiffs arguments, bu later informed plaintiffs that the original appraisal had taken the two paved lots into consideration. The appraisal considered paved parking lots as utility added to the parcel with the commercial building. (D.I> 9, ex. A at18) Necause none of the lots used for comparison had on-site parking, Legreca & Quinn assigned a higher value to the parcel with the commercial building, as opposed to valuing the two paved lots independently. (Id.) Subsequently, plaintiffs were informed that the appraisal would remain the same because Legreca & Quinn had already made an adjustment for the remaining square footage. (D.I. 1 at 4 – 5)

Various attempts to "save the deal" with Interbay were unsuccessful. (D.I. 76, ex. 1 at 7 ) Although plaintiffs then[3] [4]received financing offers from two other lenders, they concluded the '~lenders terms, rates and conditions were poor" and did not accept the offers. (Id. at 8) The agreement of sale for the property in issue was never consummated.

Plaintiffs instituted this action on June 28, 2004. (D.I. 1) Interbay moved to dismiss on July 19, 2004. (D.I. 9) On August 19, 2004, plaintiffs moved for sanctions against defendants. (D.I. 22) On November 8, 2004, the court denied plaintiffs' motion for sanctions and granted Interbay's mption to dismiss as to plaintiffs' claims that Interbay is liable for Legreca & Quinn's appraisal based on an agency relationship. (D.I. 32, 33) The motion was denied, however, with respect to plaintiffs' claim that

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The result was a value based on 1,875 square feet, the size of the parcel with the building, as opposed to 6, 980 square feet, the size of all three parcels.

4

Interbay relied on a discriminatory appraisal in violation of 12 C.F.R. § 528.2a. (it.)

As a result, a scheduling order was entered directing the exchange of discovery and setting deadlines for the filing of dispositiv motions. (D.I. 35) Interrogatories were exchanged (D.I. 41, 46, 49, 50, 51, 52, 55, 56, 73), documents propounded (D.I. 53, 58, 66, 71), and plaintiff Robert Brown was deposed. (D.I. 69, 72)

Cross motions for summary judgment and opposition thereto were subsequently filed. (D.I. 74, 75, 76, 78, 79, 80, 82, 83,
85, 86, 87) Legreca & Quinn also moved to strike affidavits filed plaintiffs. (D.I. 89, 90. 91, 92)

## III. STANDARD OP' REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatorieS, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). The moving

party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio CorD., 475 U.S. 574, 586 *n.10* (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. KemDer Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995) . The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary

judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex CorD. v. Catrett, 477 U.S. 317, 322 (1986)

## IV. DISCUSSION

### A. Plaintiffs' Allegations

Plaintiffs assert that the record, as developed through discovery and their independent research, establishes that defendants were engaged in a conspiracy to defraud them through misrepresentation by using a false and "an erroneous [a]ppraisal [r]eport prepared by Legreca & Quinn at the request of Interbay." (D.I. 78 at 3; D.I. 93 at 2) Plaintiffs contend that Legreca & Quinn have violated USPAP and FIERRA regulations in the preparation of the appraisal and that Interbay knew or should have known of the deficiencies.

Specifically, plaintiffs challenge Robert Lagreca

as unqualified to perform the appraisal because he holds a "General Appraisal License" and not a "SRPA or MIA (sic)" certification.[65]

(D.I. 93 at 4) They contend that "[a]ccording to industry standards ofcommercial appraisals, three methods should have applied to the valuations of the subject property." ~ at 8) Because Interbay engaged Legreca & Quinn to perform the appraisal and Interbay knew or should have known that the use of the commercial appraisal was erroneous and detective, plaintiffs argue that Interbay. (D.I. 82) To buttress these arguments, plaintiffs attach copies of affidavits and letters they F) Plaintiffs submit that the appraisal is so blatantly deficient that an expert witness is unnecessary to establish the standard of care. (D.I. 93)

Defendants assert that plaintiffs have failed to produce

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[5] [6]According to a document ostensibly authored by the Appraisal Institute and submitted by plaintiffs, "[l]icensed or certified appraisers are the minimum, while SRA or MM designated appraisers are at the top of the appraiser hierarchy."(D.I. 93 at ex. B) The ppraisal Institute is a not-for-profit

specific facts to support their bald allegations of discrimination. Even assuming that the appraiser lacked the highest credentials to perform commercial appraisals, defendants submit that this does not constitute discrimination. Further, absent expert testimony to establish the standard of care governing the appraisal profession, defendants assert that the negligence claims cannot stand.

Because plaintiffs have clearly identified some causes of action and implicated others only vaguely, the court has endeavored to consider as many issues as relevant to the conduct in question. To that end, the statutory claims are examined first.

B. Equal Credit Opportunity Act

The ECOA "is an anti-discrimination statute which prohibits creditors from discrimination in the extension of credit." Riethman v. Berry, 113 F. Supp.2d 765, 766 (E.D. Pa. 2000); 15 U.S.C. § 1691 (a) . It "was enacted to protect consumers from discrimination by financial institutions." Midlantic National Bank v. Hansen, 48 F.3d 693, 699 (3d Cir. 1995). Under the ECOA, "any creditor who fails to comply with any requirement imposed under this sub-chapter shall be liable to

the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class." 15 U.s.c. S l69le(a). To that end, lenders are prohibited from relying on an appraisal that they know, or should know, is discriminatory in violation of the ECOA. See 12 C.F.R. S 528.2a (2004)

To establish a prima facie case under the ECOA, plaintiffs must demonstrate that: (1) they were a member of a protected class; (2) they applied for credit from defendants; (3) plaintiffs were qualified for the credit; and (4) despite qualification, plaintiffs were denied credit. Chian~ v. Veneman, 385 F.3d 256, 259 (3d Cir. 2004)

Although plaintiffs assert that the record demonstrates discriminatory conduct in violation of the ECCA, they have not presented any evidence to substantiate their allegations. Specifically, there is nothing demonstrating that they were denied credit based on a discriminatory action. In fact, plaintiffs were not denied credit at all. Instead, Interbay changed the terms originally proposed after the appraisal was submitted. Plaintiffs, however, were

still qualified for a loan from Interbay, as well as loans proposed by two other creditors, albeit at a less favorable rate. Therefore, plaintiffs have failed to carry their burden to prove a prima facie case under the ECOA.

To the extent that plaintiffs assert a discrimination claim outside of the scope of the ECOA, based on their argument that the appraisal was discriminatory, the record does not support this contention. Specifically, there is no evidence of record depicting different appraisal methodology being applied to Non-African American property by Legreca & Quinn or used by Interbay. Moreover, plaintiff Robert Brown testified that he has no evidence that Legreca & Quinn appraised properties for other potential buyers by using different methods of appraisal when the property appraised was similar to the subject property. (D.I.74)

See e.g. Rizzitiello v. McDonald's Coro., 2005 WL 545014 at

*3(D. Del. 2005) (evidence of disparate treatment necessary for discrimination claim)

**C. The Fair Housing Act**

The F1{A provides:

> It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

42 U.S.C. § 3605(a). The FHA was enacted to provide fair housing throughout the United States. 42 U.S.C. § 3601. The FHA defines "dwelling" as "any building, structure, or portion of which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 42 U.S.C. ~3602(b). The FHA covers residential real estate and not commercial transactions. See Wei~narten Realty Investors v. ~j~tsQ~Inc~, 66 F. Supp.2d 825, 849 (S.D. Tex. 1999); Home Ouest Mortcrac~e LLC v. American Family Mutual

Ins., 340 F. Supp.2d 1177, 1184-1185 (D. Kan. 2004) . Since it is undisputed that the property in issue was zoned commercial, and that plaintiffs intended to use it for a commercial purpose, plaintiffs' claims under the FI{A must fail.

D. **Negligence**

To state a claim for negligence, plaintiffs must demonstrate[6] that: (1) a defendant owed plaintiffs a duty of care; (2) the defendant breached that duty; and (3) the defendant's breach was the proximate cause of plaintiffs' injury. New Haverford Partnershio v. Stroot, 772 A.2d 792, 798 (Del. 2001).

By asserting that Legreca & Quinn deviated from the

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[6] "Inasmuch as plaintiffs seek to hold Interbay liable on an agency relationship with Legreca & Quinn, the court previously rejected this argument by concluding that Legreca & Quinn was acting as an independent contractor. (D.I. 32) To that end, having failed to present expert testimony depicting the appraisal as improper or discriminatory, plaintiffs' discrimination claims against Interbay for relying on the appraisal also fail.

applicable standard of care required for real estate appraisers, a claim for professional negligence is implicated. To state a claim for professional negligence, however, the standard of care applicable to a professional can only be established through expert testimony. Nortleet v. Mid-Atlantic Reality ComDanv. Inc., 2001 WL 695547 (Del. Super. 2001); Davis v. Maute, 770 A.2d 36, 40 n. 3 (Del. 2001).

Plaintiffs have not presented a real estate appraisal expert to establish the standard of care owed by Legreca & Quinn. (D.I. 74 at 8-10, 19) Absent expert testimony, plaintiffs' claim for professional

negligence against Legreca & Quinn fails.' Relatedly, to the extent that plaintiffs contend Legreca & Quinn's conduct violates the professional standards for appraisers under FIRREA and USPAP, the court cannot assess these claims absent expert testimony. Even with the assistance of expert testimony, however, it is unclear whether these claims are even actionable under federal law.

E. Fraud

To state a claim for common law fraud under Delaware law,[7] plaintiffs ust prove: "(1) a false representation made by defendants, usually one of fact; (2) defendants' knowledge or belief that the statement was false; (3) an intent to induce the plaintiffs to act; (4) plaintiffs' justifiable reliance upon the representation; and (5) damage to the plaintiffs as a result." In re: Student Finance Corporation v. Royal Indemnity Co., 2004 WL 609329 at *3 (D. Del. 2004), citing Stephenson v. Caoanon Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983)).

Considering plaintiffs' allegations in light of this authority, the court finds there is nothing of record establishing a false representation by defendants. On that point, an expert report would be most helpful. Although plaintiffs suggest

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[7] The affidavit of Robert Lagreca was submitted by Legreca Quinn. As noted above in more detail, Lagreca averred that "[a]ll analyses, opinions and conclusions in the appraisal report provided to Interbay were prepared in conformity with the USPAP, the SPAP and the Code of Professional Ethics." (D.I. 74 at ex. p. 3-4, infra at 3)

that Legreca & Quinn's failure to employ certain appraisal methodology and Interbay's reliance thereof is fraudulent, they simply have not presented any evidence in support of their allegations.

Nonetheless, even assuming that the appraisal was faulty, plaintiffs still have not demonstrated that they relied on the appraisal. Because the appraisal was prepared for the sole benefit of Interbay and was not to be distributed to plaintiffs, only Interbay could have reasonably been expected to rely on it. (D.I. 78 **ex.** B-D) Further, there is nothing of record demonstrating that Interbay misrepresented the appraisal to plaintiffs.

## V. CONCLUSION

For the reasons stated, plaintiffs' motion for summary judgment is denied and defendants' motions for summary judgment are granted. An appropriate order shall issue.

**Exhibit B**

**NOT PRECEDENTIAL**

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**
**No.06-1177**
**ROBERT E. BROWN;**
**SHIRLEY H. BROWN, h/w**
**Appellants**

**V.**

**INTERBAY FUNDING LLC;**
**LEGRECA & QUINN REAL ESTATE**
**SERVICES INC.**

**On appeal From the United States District Court**
**For the District of Delaware**
**(D. Del. Civ. No. 04-cv-00617)**
**District Judge: Honorable Sue L. Robinson**

**Submitted Under Third Circuit LAR 34.1(a)**

**August 17, 2006**

**Before: SLOVITER, SMITH AND VAN ANTWERPEN,**
**CIRCUIT JUDGES**

**(Filed: August 18, 2006)**

**OPINION**

**PER CURIAM**

Appellants Robert and Shirley Brown ("the Browns") filed this suit Pro Se in the United States District Court for the District of Delaware, asserting negligence, fraud, and discrimination claims against Appellees, Interbay

Funding LLC ("Interbay") and Lagreca and Quinn Real Estate Services, Inc. ("Lagreca"), in connection with the approval process for a mortgage loan. Intending to expand their deli business, the Browns contracted to buy three parcels of property located at 2617, 2619, and 2625 Market Street in Wilmington, Delaware for $128,000. Two parcels were paved parking lots and the third contained a two-story commercial building. After abandoning their initial efforts to obtain financing elsewhere, the Browns applied for a loan from Interbay, a mortgage lender. At that time, the Browns anticipated that the appraised value of the property would be approximately $200,000, making them eligible for 80% financing of the purchase price with a 20% down payment.'

Interbay approved the Browns' loan application subject to an appraisal, which it then hired Lagreca to perform. Lagreca appraised the property at $140,000. Based on this figure, Interbay notified the Browns that it would only be

able to finance *65%* of the purchase price and that [8]the down payment would be *35%*. The Browns rejected this financing offer, and subsequent attempts to save the deal with Interbay proved unsuccessful. The Browns then filed this suit in the District Court, alleging that Lagreca and Interbay discriminated against them on the basis of their race (African-American) by producing and relying on a flawed appraisal which altered the financing terms. After discovery concluded, the parties filed cross-motions for summary judgment. In an order entered January II, 2006, the District Court granted summary judgment to Interbay and Lagreca. The Browns timely appealed.

We have jurisdiction over this appeal pursuant to 28

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[8]The Browns' expectations were apparently based on an appraisal they had obtained prior to Interbay and Lagreca's involvement.

U.S.C. § 1291. The Browns argue that they were entitled to default judgment against Interbay, because Interbay did not answer the complaint within 20 days after service of the summons and complaint as required by Federal Rule of Civil Procedure 12(a)(1)(A). The Browns further contend that the District Court abused its discretion by ignoring evidence of Interbay's late answer, failing to rule on the motion for default judgment, and allowing Interbay to substitute a motion to dismiss for an answer. We observe at the outset that tht District Court ruled on the motion for a default judgment, denying it on May 11, *2005.* See Dkt. /1 *95.* We review that denial for abuse of discretion. See Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000). While the Browns correctly note that Rule 7(a) requires both a complaint and an answer, they overlook that the time period for filing an answer is altered when a defendant files a motion

under Rule 12. See Fed. R. Civ. P. 12(a)(4). On July 19, 2004, exactly 20 days after service of the summons and complaint, Jnterbay timely filed a niotim t~4ismiss pursuant to Rule 12(b)(6). See Dkt. # 8. Interbay's motion was not a "substitute" for an answer. Rather, the motion merely extended Interbay's time to file an answer until ten days after receiving notice of the District Court's action on its motion. See Fed. R. Civ. P. 12(a)(4)(A). The District Court disposed of the motion to dismiss on November 8, 2004. See Dkt. # 33. Interbay filed its answer on November 22, 2004, in compliance with Rule 1 2(a)(4)(A).[2] See Dkt. # 36. As its answer was timely filed, Interbay did not "fail to plead or otherwise defend as provided by [the] rules." See Fed. R. Civ. P. *55(a).* Thus, the District Court did not abuse its discretion by denying the Browns' motion for default judgment. The Browns' related arguments that the alleged abuse of discretion deprived the District Court of jurisdiction and violated the Browns' constitutional rights

are unsupported and unpersuasive. Similarly, the Browns were not prejudiced by Lagreca's initial failure to respond adequately to their interrogatories. Indeed, the Browns acknowledge that the District Court remedied this problem by ordering Lagreca to provide [9]substantive and meaningful responses. In light of Lagreca's prompt compliance with that order, the Browns have failed to demonstrate any prejudice. Finally, the Browns repeat their contentions that the appraisal was flawed because it only accounted for one parcel rather than all three. In support of this argument, the Browns assert that Lagreca"impeached" itself in its interrogatory responses when it claimed to have included the two paved lots in the appraisal, yet asserted that the

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[9]Weekend days and legal holidays are excluded from the computation of any tin'71e period of less than 11 days. Fed. R. Civ. P. 6(a)

value of the lots themselves was unknown. The District Court addressed these allegations in connection with the Browns' negligence and fraud claims against Lagreca. We agree with the District Court that the negligence claim fails, because the Browns did not introduce any expert testimony to establish the standard of care owed to them by Lagreca. See Travelers Indem. Co. v. Ewing, Cole, Erdman & Eubank, 711 F.2d 14, 17 (3d Cir. 1983); Seiler v. Levitz Furniture Co. of Eastern Region, Inc., 367 A.2d 999, 1008 (Del. 1976). The record evidence likewise does not support a fraud claim. Although the Browns obviously disagree with Lagreca' s appraisal method, they have not presented any evidence tending to show that the appraisal constituted a knowingly false statement on Lagreca's part. See Stephenson v. Capano Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983). Neither can the Browns show that Lagreca intended to use the appraisal to induce them to act

or that they 'justifiably relied" on the appraisal, as Lagreca prepared the appraisal solely for Interbay's use. See id. As the Browns do not discuss, or even refer to, their discrimination claims in their brief, we consider those issues to be waived.[3] See Fed R. App. P. 28(a)(2); Brown v. Sielaff, 474 F.2d 826, 828 (3d Cir. 1973)(issues not raised in a brief on appeal cannot be noticed by the court). The[10] District

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[10]We note that this omission appears to be intentional rather than inadvertent. In their motion to strike Appellees' response briefs, the Browns strenuously argue that Appellees' briefs did not address the issues raised in the opening brief, which concerned only jurisdiction, default judgment, Lagreca' s self-impeachment, and "numerous statutory and constitutional issues." In light of this emphatic statement we decline to read the Browns' opening brief as raising any additional issues. Moreover, had the Browns challenged the disposition of the discrimination claims, we would have affirmed the District Court's judgment as to those claims.

Court's judgment is affirmed. The Browns' motion to strike Appellees' briefs is denied. To the extent Lagreca's motion for leave to file a supplemental appendix is construed as a request to attach the order appealed from, it is granted. To the extent that the motion is construed as a request to expand the record on appeal to include documentation related to Robert Lagreca's qualifications as an appraiser, it is denied. We note that, given the basis for our disposition, this documentation would have had no impact on our disposition even had this motion been granted.

**Exhibit C**

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**
**No. 06-1177**

**ROBERT E. BROWN;**
**SHIRLEY H. BROWN, hlw**
**Appellants**
**V.**

**INTERBAY FUNDING LLC;**
**LEGRECA & QUINN REAL ESTATE**
**SERVICES INC.**

**On appeal From the United States District Court**
**For the District of Delaware**
**(D.C. Civil No. 04-cv-006 17)**
**District Judge: Honorable Sue L. Robinson**
**Present: SCIRICA, Chief Judge, SLOVITER, McKEE,**
**RENDELL, BARRY, AMBRO, FUENTES, SMITH,**
**FISHER**
**VAN ANT WERPEN and CHAGARES, Circuit Judges**
**SUR PETITION FOR REHEARING**
**WITH SUGGESTION FOR REHEARING EN BANC**

The petition for rehearing filed by *pro se* Appellants having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en bane*, the petition for

Rehearing is hereby denied.

By the Court,

/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: September 18, 2006
CRG/CC: Mrs.. Shirley H. Brown
Mr.. Robert E. Brown
Carol J. Antoff, Esq..
David L. Finger, Esq.

Supreme Court, U.S.
FILED
FEB 5 - 2007
OFFICE OF THE CLERK

No. 06-943

IN THE

# Supreme Court of the United States

Robert E. Brown and Shirley H. Brown h/w,

*Petitioners,*

*v.*

Interbay Funding LLC, and Lagreca and Quinn Real Estate Services Inc.,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## BRIEF IN OPPOSITION FOR RESPONDENT LAGRECA AND QUINN REAL ESTATE SERVICES, INC.

LOUIS RIZZO
ARTHUR KUHL*
ROCHELLE GUMAPAC
REGER RIZZO KAVULICH & DARNALL LLP
1001 Jefferson Place
Suite 202
Wilmington, DE 19801
(302) 652-3611

* *Counsel of Record*

*Counsel for Respondent Lagreca and Quinn Real Estate Services Inc.*

206481

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## QUESTION PRESENTED

Whether the Court of Appeals properly affirmed the District Court's grant of summary judgment when there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law.

## CORPORATE DISCLOSURE STATEMENT

Respondent, Lagreca and Quinn Real Estate Services, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

## STATEMENT OF THE CASE

On March 11, 2004, in the hopes of expanding their deli, Plaintiffs entered into a sales agreement to purchase property located on three tax parcels, 2617, 2619, and 2625 Market Street, Wilmington, Delaware (hereinafter "Property") for $128,000. Based on other properties within the same zip code, the Plaintiffs anticipated the properties' value to be appraised at $200,000, making them eligible for 80% financing of the purchase price with a 20% down payment. Defendant Interbay Funding LLC (hereinafter "Interbay") agreed to give the Plaintiffs financing for the property subject to appraisal for which it hired Lagreca and Quinn Real Estate Services, Inc. (hereinafter "L&Q) as the independent appraiser. L&Q appraised the property at $140,000, which resulted in a change to the financing agreement such that Plaintiffs were only eligible for 65% financing of the purchase price with a 35% down payment.

Plaintiffs, after hearing of the change in the financing terms, rescinded the $2,500 that had been transferred to L&Q, alleging that L&Q used erroneous appraisal methods. Initially, Interbay agreed to have all three properties reappraised but later informed the Plaintiffs that the first appraisal was proper and they would not have it reappraised. Various attempts to save the deal with Interbay were unsuccessful. Although Plaintiffs received other offers for financing from two other lenders, they rejected the offers because they believed the lenders' terms, rates and conditions

---

1. All factual and procedural assertions are supported by the Complaint, Motion for Summary Judgment filed by Defendant Lagreca and Quinn Real Estate Services, Inc, District Court Amended Memorandum Opinion and Third Circuit Court of Appeals Opinion.

were poor. On June 28, 2004 Plaintiffs filed a Complaint in the District Court of Delaware against Interbay and L&Q.

**A. Proceedings in District Court**

The Complaint alleged negligence, fraud, and discrimination claims in connection with the approval process for a mortgage loan. On July 19, 2004, Interbay moved to dismiss the action. On August 19, 2004 Plaintiffs moved for sanctions against Defendants. On November 8, 2004, the Court denied the Plaintiff's motion for sanctions and granted Interbay's motion to dismiss in part by denying Plaintiff's theory of agency between Interbay and L&Q. As a result, discovery ensued with cross motions for summary judgment and opposition therto subsequently filed. On January 11, 2006, District Court of Delaware, Judge Sue Robinson issued an Order granting Interbay's and L&Q's Motions for Summary Judgment and issued a Memorandum Opinion. On February 16, 2006, an Amended Memorandum was issued correcting one sentence of the original Memorandum Opinion.

**B. Proceedings in Third Circuit Appellate Court**

On February 17, 2006, the Plaintiffs filed an appeal to the Third Circuit Appellate Court claiming abuse of judicial discretion by Judge Sue Robinson in granting summary judgment for the Defendants. On August 18, 2006, before Judges Sloviter, Smith, and Van Antwerpen, the Appellate Court affirmed the District Court. The Plaintiffs then filed a Petition for Writ of Certiorari to the United Supreme Court claiming that the Court of Appeals affirmation was improper because it conflicted with Supreme Court case law and a Third Circuit Appellate case.

## SUMMARY OF ARGUMENT

The decision of the Court of Appeals in no way conflicts with any applicable precedent of this Court including the case of *Youngblood v. West Virginia.* 126 S.Ct. 2188 (2006). Additionally, the Court of Appeals decision affirming the District Court judgment does not conflict with the case of *Nationwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc.*, No. 05-1031, 2006 U.S. App. LEXIS 6282 (3d Cir. Mar. 14, 2006).

## REASONS FOR DENYING THE PETITION

### I. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH ANY SUPREME COURT PRECEDENT

In *Young*, the Supreme Court granted a writ of certiorari to an inmate because it was found that possible exculpatory evidence, a note written by two of his accusers, was withheld by the police. *Young,* 126 S.Ct. 2188. When the government fails to disclose evidence materially favorable to the accused, there is a *Brady* violation. *See Brady v. Maryland*, 373 U.S. 83 (1963).

In the instant case, Plaintiffs cannot suggest that a Brady violation occurred as in *Young* because this is a civil matter not a criminal matter. Additionally, even if *Brady* applied to civil matters, Plaintiffs have mistakenly analyzed the case because they cite to the alleged application of "irrational and erroneous reasoning of facts" by Judge Robinson as the *Brady* violation rather than citing to facts in the record indicating they were denied an opportunity to examine evidence that

would be favorable to them. Thus the affirmation by the Court of Appeals does not conflict with this or any other Supreme Court precedent.

## II. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR PRECEDENT IN THE COURT OF APPEALS

In *Nationwide v. Starlight Ballroom Dance Club*, No. 05-1031, 2006 U.S. App. LEXIS 6282 (3d Cir. Mar. 14, 2006), the court affirmed the lower court's default judgment because the insured waited three months to answer the declaratory judgment suit filed by the insurer, Nationwide, and the insured could not have shown that it would have had a meritorious defense and the default was not the result of its culpable conduct. *Starlight*, 2006 U.S. App. LEXIS 6282. In order for the Court to vacate a default judgment, the Court must take into consideration: (1) whether the plaintiff will be prejudiced; (2) whether the defense has a meritorious defense; and (3) whether the default was the result of the defendant's culpable conduct. *Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979 (3d Cir. 1988).

Plaintiffs' reliance on *Nationwide* is clearly misplaced. As the Court of Appeals stated in its opinion, the time period to file an answer in this case was tolled as to Interbay when it filed a motion to dismiss pursuant to Rule 12(b)(6), which does not replace the requirement of an answer but rather just extends Interbay's time to file an answer until ten days after receiving notice of the District Court's action on its motion. *See* FED. R. CIV. P. 12(a)(4)(A) and 12(b)(6). As to L&Q, it properly filed an answer to the complaint, filing it on July 17, 2004 within the 20 day time frame permitted by FRCP Rule 12(a)(1)(A). *See* FED. R. CIV. P. 12(a)(1)(A). Thus,

the standard to be used when deciding to vacate a default judgment is not applicable here since there was no default judgment entered in this case.

## CONCLUSION

Robert and Shirley Browns' petition for writ of certiorari should be denied.

Respectfully submitted,

LOUIS RIZZO
ARTHUR KUHL*
ROCHELLE GUMAPAC
REGER RIZZO KAVULICH & DARNALL LLP
1001 Jefferson Place
Suite 202
Wilmington, DE 19801
(302) 652-3611

*Counsel for Respondent*
*Lagreca and Quinn Real Estate*
*Services Inc.*

* *Counsel of Record*

# REPLY BRIEF

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(4)

06-943

No.2

FILED
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE
UNITED STATES

**********

Robert F. Brown and
Shirley H. Brown h/w
Petitioners

v

Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

**********

ON PETITION FOR WRIT OF CERTIORARI FROM THE
UNITED STATES COUR OF APPEALS
FOR THE THIRD CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Finger & Slanina, LLC
David L. Finger
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-11
(302) 884-6766
Rizza Reger &, LLP
Anton D. Kohl* Esq.
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302) 652 3611
Attorneys For Petitioners
David M. Souders
Sandra L. Brickel
Weiner Brodsky

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## QUESTIONS PRESENTED

1. Is a Fraud being attempted on United States Supreme Court?
2. Did the Judges of the United States District Court of Delaware, and the Third Circuit Court of Appeals error when they allowed Interbay Funding LLC to use their filing date of July 19, 2004 of their Motion to dismiss which expired on August 2, 2004, as Interbay Funding LLC filing a timely answer to Robert E. and Shirley H. Browns Complaint? (***See Exhibit A, Docket entry no. 8)***
3. Did the Judges of the United States District Court of Delaware, and the Third Circuit Court of Appeals error when they allowed Interbay Funding LLC to obscure the actual filing date which appears on the United States District Court of Delaware's Docket showing that Interbay Funding LLC did not file an answer to Robert E. and Shirley H. Browns Complaint until November 22, 2004? (***See Exhibit A, Docket entry No. 36)***
4. Did United States District Court acquire jurisdiction of the person of Interbay?
5. Did the Respondents conceal evidence of the correct filing date of Interlays' filing of the answer to the Robert E. and Shirley H. Browns Complaint?

## STATEMENT OF THE CASE

The Browns Petition of Writ of Certiorari was granted on the basis of Supreme Court Rule 10, a, b, and c.

## RESPONDENTS ARGUMENT

L.Q argument is that the decision of the two cases (Youngblood v. West Virginia and Nationwide Insurance Co. v. Starlight Ballroom) the Brown's cite in support of their Petition do not conflict with the ruling of Judge Sue L. Robinson of the District Court of the State of Delaware and the Third Circuit Court of Appeals Opinion of Judges Sloviter, Smith and Van Antwerpen of August 18, 2006.

L.Q alleges that the case of Youngblood v. W. Virginia issues of this case are criminal and involved the with holding of evidence by the state prosecutor, therefore was not relevant nor applicable to the Brown v. Interbay and Legrecca and Quinn case, based solely on the issues involved in the cases.

L.Q alleges that the case of Nationwide Insurance Co. v. Starlight Ballroom is misplaced because the Third Circuit Court of Appeals admits that Interbay Funding LLC herein after referred to as Interbay Motion to Dismiss was not an answer

required by See FED CIV. P Rule 7, but it extended the time to file and answer until ten days after receiving notice of the District Courts action on the Motion to Dismiss See FED Civ. P. 12(a) (4(A), 12(B) (6).

L.Q further states that Interbay filed an answer to the complaint, by filing its Motion to Dismiss on July 17, 2004 was within the 20 day time frame permitted by FRCP Rule 12(a)(1)(A).

**PETITIONERS RESPONSE**

The Brown's allege that L.Q has misrepresented the facts of the case of Interbay's filing an answer to the Brown's Summons and Complaint served on Interbay on June 28, 2004 of which they did not answer until November 22, 2004 (***See Docket "No. 33 Answer to Complaint by Interbay Funding LLC." See attached Exhibit A, line 36).***

The Browns further allege that L.Q response brief on page 4 paragraph heading,

***"II THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR PRECEDENT IN THE COURT OF APPEALS"*** second paragraph, states that Interbay

filed a Motion to Dismiss on July 19, 2004, which was the 20th day and the last day Interbay had to file an answer to the Browns Complaint.

L.Q states FED. CIV. P. Rule 12(b)(6), which does not replace the requirement of an answer but rather just extends Interplay's time to file an answer until ten days after receiving notice of the District Court's action on its motion.

The Browns states that the United States District Court of Delaware Docket No. 8 Interbay Funding LLC filing of the Motion to Dismiss on 7/ 19/ 2004 was extended to 8/2/2004, after which time, the extension it had expired. ***(See attached Exhibit A, line 8).***

The Browns state that the period which appears on Exhibit A, line 8 (Interlays Motion to Dismiss) to line 36 of Exhibit A (Interlays Answer to the Browns Complaint) is a total of 113 days. ***(See attached Exhibit A).***

A. PROCEDINGS IN DISTRICT COURT

The District Court allowed Interbay Funding LLC to use their filing date of Motion to Dismiss of July 19, 2004 which

expired on August 2, 2004 as their timely filing of an answer to the Robert E. and Shirley H. Browns Complaint.

B. The Third Circuit Court of Appeals also allowed Interbay Funding LLC to use their Motion to dismiss filing of July 19, 2004 as the correct date for filing an answer to the Robert E. and Shirley H. Browns Complaint.

## SUMMARY OF ARGUMENT

The decision of the United States District Court of the State of Delaware, and the Third Circuit Court of Appeals decisions conflict with ***Youngblood v. W. Virginia and Nationwide Insurance Co. v. Starlight Ballroom*** cases Robert E. and Shirley H. Brown have cited pursuant to Supreme Court Rule 10, a, b, and c.

## REASONS FOR GRANTING THE PETITION:

## UNITED STATES DISTRICT COURT OF DELAWARE AND THE THIRD CIRCUIT COURT OF APPEALS CONFLICTS WITH

**Youngblood v. W. Virginia and *Brown v. Interbay and Legreca and Quinn.***

The issues of Youngblood v. W. Virginia was the State prosecutor for the State of W. Virginia with held evidence of a hand written note by the victim of the alleged rape by Youngblood, that the sexual act was with consent.

On Appeal to the United States Supreme Court the Supreme Court held that it was a violation of Youngblood's civil rights for the State of W. Virginia to with hold evidence that would exonerate Youngblood, and reversed the conviction.

Robert E. and Shirley H. Brown contend that the issues of Brown v. Interbay Funding LLC and Legreca Quinn are similar because in the ease of Brown v. Interbay and Legreca and Quinn, the Defendants\Respondents with held evidence of the fact that Interbay did not file an answer to the Robert E. and Shirley H. Brown Complaint until November 22, 2004. (See Exhibit A, entry 36, Interbay Funding LLC answer to Complaint.

**UNITED STATES DISTRICT COURT OF DELAWARE AND THE THIRD CIRCUIT COURT OF APPEALS CONFLICTS WITH;**

***Nationwide Insurance Co. v. Starlight Ballroom***

Robert E. and Shirley H. Brown further contend that ***Nationwide Insurance Co. v. Starlight Ballroom and Brown v. Interbay and Legreca and Quinn*** are similar in that ***Nationwide Insurance Co.*** **filed a Complaint against** ***Starlight Ballroom*** **but** ***Starlight Ballroom*** did not answer the complaint until 120 days after they had been served with the Summons and Complaint.

***Nationwide Insurance Co.*** filed for a Default Judgment and was granted a judgment against ***Starlight Ballroom***.

***Starlight Ballroom files*** a Motion to Set Aside the Default Judgment.

The Third Circuit Court of Appeals denied ***Starlight Ballrooms Motion to Set Aside the Judgment***, holding that the District Court had three issues it had to consider, 1. Would the party filing the motion be prejudiced, 2. Did the defendant have a meritorious defense, and 3? Was the default due to the defendants own culpability?

In Brown ***v. Interbay Funding LLC and Legreca and Quinn,*** **the** ***Browns filed their Complaint on June 28, 2004 and Interbay filed a Motion to Dismiss on July 19, 2004*** which was

the last day of the required 20 day period Interbay had to answer the ***Complaint.*** This meant that Interbay had an additional 10 days to answer which was due by February 2, 2004.

The ***Browns*** contend that the United States District Courts Docket item No. 36 shows that ***Interbay Funding LLC did not file*** an answer to the ***Browns Complaint until 113 days after it was required by FRCP 7,*** which states that a defendant has 20 days to file an answer to a complaint.

## CONCLUSION

Robert E. and Shirley H. Brown respectfully request that this Writ of Certiorari be allowed to go forward.

Robert E. Brown

Shirley H. Brown h/w
1024 Walnut Street
Wilmington, DE. 19801
(302) 652- 9959

Notary of Republic

EMERY T. GHOLSTON
NOTARY PUBLIC
STATE OF DELAWARE
IMISSION EXPIRES SEPTEMBER 17 2009

EMERY T. GHOLSTON
NOTARY PUBLIC
STATE OF DELAWARE
MY COMMISSION EXPIRES SEPTEMBER 17 200

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

Robert E. Brown and
Shirley H. Brown h/w
Petitioners
v.

Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

**CERTIFICATE OF SERVICE NOTICE OF PETITIONERS RESPONSE BRIEF TO RESPONDENTS BRIEF IN OPPOSITION TO WRIT OF CERTIORARI**

This is to certify that on this 11th day of 2007 (Feb) This notice of Writ of Certiorari was served on the following lawyers:

David L. Finger Finger & Slanina, LLC David M. Souders
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801
(302) 884-1666
(302) 884-6766

Sandra L. Brickel
Weiner Brodwky
1300 19th Street,
Suite 725
Washington, DE
20036-1609
(202) 884-2000
(202) 628-2011 Reger

Arthur D. Kuhl,* Esq.
Reger Rizzo Kavulich and Darnall LLP
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801

Robert E. Brown, Pro Se.

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington DE. 19801
(302) 652-9959

# APPENDICES

# EXHIBIT A 1 of 2

Suite 202
Wilmington, DE 19801
(302) 652-3611
Email: cantoff@regrizlaw.com
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Movant**
**The United States of America** represented by **Ellen W. Slights**
U.S. Attorney's Office
The Nemours Building
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046
(302) 573-6277
Email: ellen.slights@usdoj.gov
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|---|---|---|
| 06/28/2004 | 1 | COMPLAINT filed. Magistrate Consent Notice & Rule 4 to Pltf. FILING FEE $ 150.00 RECEIPT # 136390 (mwm) (Entered: 06/28/2004) |
| 06/28/2004 | | SUMMONS(ES) issued for Interbay funding LLC, Legreca & Quinn (mwm) (Entered: 06/28/2004) |
| 06/30/2004 | 2 | RETURN OF SERVICE executed as to Interbay funding LLC 6/29/04 Answer due on 7/19/04 for Interbay funding LLC (dab) (Entered: 07/01/2004) |
| 06/30/2004 | 3 | RETURN OF SERVICE executed as to Legreca & Quinn 6/29/04 Answer due on 7/19/04 for Legreca & Quinn (dab) (Entered: 07/01/2004) |
| 07/07/2004 | 4 | CASE assigned to Judge Sue L. Robinson . Notice to all parties. (rjb) (Entered: 07/07/2004) |
| 07/15/2004 | 5 | Letter to Clerk from C. Antoff enclosing Entry of Appearance (fmt) (Entered: 07/15/2004) |
| 07/15/2004 | 6 | NOTICE of attorney appearance for Legreca & Quinn by Carol J. Antoff (fmt) (Entered: 07/15/2004) |
| 07/16/2004 | 7 | ANSWER to Complaint by Legreca & Quinn; jury demand (fmt) (Entered: 07/19/2004) |
| 07/19/2004 | 8 | MOTION by Interbay funding LLC with Proposed Order to Dismiss Answer Brief due 8/2/04 re: [8-1] motion (fmt) (Entered: 07/19/2004) |
| 07/19/2004 | | **Added for Interbay funding LLC attorney David L. Finger (fmt) (Entered: 07/19/2004) |
| 07/19/2004 | 9 | Opening Brief Filed by Interbay funding LLC [8-1] motion to Dismiss |

| | | |
|---|---|---|
| 11/22/2004 | 35 | Letter to plt's. from Judge Robinson returning papers captioned "Stipulation of Compromise and Settlement" consistent with Fed. R. Civ. 68; not to be filed unless accepted by the adverse party and should only be filed by the deft(s). in a case. (rld) (Entered: 11/22/2004) |
| 11/22/2004 | 36 | ANSWER to Complaint by Interbay funding LLC (fmt) (Entered: 11/22/2004) |
| 11/22/2004 | 37 | MOTION by Robert E. Brown, Shirley H. Brown to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, Answer Brief due 12/6/04 re: [37-1] motion (fmt) (Entered: 11/22/2004) |
| 11/30/2004 | 38 | MOTION by Robert E. Brown, Shirley H. Brown for Default Judgment against Interbay funding LLC Answer Brief due 12/14/04 re: [38-1] motion (rld) (Entered: 12/01/2004) |
| 11/30/2004 | 39 | Letter to Clerk from D. Mellon enclosing D.I. 40 for filing. (rld) (Entered: 12/01/2004) |
| 11/30/2004 | 40 | Answer Brief Filed by Legreca & Quinn [37-1] motion to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, - Reply Brief due 12/7/04 (rld) (Entered: 12/01/2004) |
| 12/06/2004 | 41 | INTERROGATORIES propounded by Robert E. Brown, Shirley H. Brown to Interbay funding LLC, Legreca & Quinn (rld) (Entered: 12/06/2004) |
| 12/06/2004 | 42 | Answer Brief Filed by Interbay funding LLC [37-1] motion to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, - Reply Brief due 12/13/04 (rld) (Entered: 12/07/2004) |
| 12/07/2004 | 43 | Compendium of unreported cases Filed by Interbay funding LLC re: [42-1] answer brief (rld) (Entered: 12/07/2004) |
| 12/08/2004 | 44 | Answer Brief Filed by Interbay funding LLC [38-1] motion for Default Judgment against Interbay funding LLC - Reply Brief due 12/15/04 (rld) (Entered: 12/08/2004) |
| 12/14/2004 | | **Terminated deadlines (rld) (Entered: 12/14/2004) |
| 12/20/2004 | 45 | Response to Defendants Response Filed by Robert E. Brown, Shirley H. Brown [38-1] motion for Default Judgment against Interbay funding LLC (fmt) (Entered: 12/21/2004) |
| 12/22/2004 | | **Terminated deadlines (rld) (Entered: 12/22/2004) |
| 01/11/2005 | 46 | ANSWER to Interrogatories filed by Interbay funding LLC (rld) (Entered: 01/11/2005) |
| 01/13/2005 | 47 | Letter to Clerk from C. Antoff enclosing cert. of svc. (fmt) (Entered: 01/18/2005) |
| | | |

51

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FILED
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SUPREME COURT, U.S.

# IN THE SUPREME COURT OF THE UNITED STATES

**06-943**

Robert E Brown and Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca and Quinn Real Estate Services Inc.
Respondents

**ON PETITION OF WRIT OF CERTIORARI FROM THE UNITED STATES COUR OF APPEALS FOR THE THIRD CIRCUIT**

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## REHEARING OF PETITION FOR WRIT OF CERTIORARI

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**David L. Finger Finger & Slanina, LLC**
David Finger
One Commerce Center
1201 Orange Street, Suite 725
Wilmington DE. 19801
(302) 884-6766

David Sauders
Sandra L. Brickel
Weiner Brodwky

Author D. Kohl, **Esq. Reger & Rizzo, LLP**
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302)652-6366
Attorneys for Petitioners

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## QUESTIONS PRESENTED

1. Did the Clerk of the Court of the United States Supreme Court err when they failed to file and place on the U. S. Supreme Court docket, Robert E. and Shirley H. Brown's response brief that was received in the United States Supreme Court Clerks office on February 18, 2007? The Supreme Court Docket is regulated by Supreme Court Rule 1, 15, and 16. Robert E. and Shirley H. Brown contend that the omission of the docket entries by the Clerks office of their brief and failure to distribute their brief to Supreme Court Justices of U.S. Supreme Court on March 16 – 19, 2007 (dated February 18, 2007), violated their 5th and 14 Amendments Rights of "Due Process and Equal Protection" of the United States Constitution.

2. Did the Clerk of the United States Supreme Court violate Supreme Court Rules 1, 15, and 16?

3. Did the United States Supreme Court Clerks Office suppress the evidence submitted by Petitioners pursuant to United States Supreme Court Rule 32, by failing to file, docket, and distributed Petitioners brief, and failing to allow Petitioners exhibits to be placed on the United States Supreme Court docketed to be reviewed by the Justices of the United States Supreme Court the hearing

of Petitioners Writ of Certiorari on March 16 – 19, 2007?

4. Did the U.S Supreme Court Clerk violate Supreme Court Rules and Procedures by requesting by telephone ten (10) additional copies of the Petitioners Response brief of February 18, 2007 brief, because the 11 point font was to small for the Justices of the United States Supreme Court to see, and that they would need to be made to the size of a twelve (12) point font because?

## II. INTERVENING AND CONTROLING CAUSE PURSUANT TO U.S. SUPREM COURT RULES 44, 1, 2

Robert E. and Shirley H. Brown (hereinafter the Petitioners) filed a response brief to the Respondents Lagreca and Quinn (hereinafter Respondents) response to the Petitioners Petition of Writ of Certiorari in February 2007. The Petitioners brief was received in the United States Supreme Court Clerks Office in accordance with United States Supreme Court Rule 1. The Clerk of the Supreme Court Stamp date of the Petitioners response brief to Respondents response brief, was not placed on the Supreme Court Docket, nor was it distributed to the United States Supreme Court Judges as required by United States Supreme Court Rules 1, 15, and 16. See Exhibit A, B, and C.

The Petitioners were denied the right to have their response brief which was filed on February 28, 2007 reviewed by the United States Supreme Court Justices

review of their Petition of March 16 – 19, 2007. See Exhibit A, B, and C.

## II. INTERVENING AND CONTROLING CAUSE PURSUANT U.S. SUPREM COURT RULES TO 1, 15, AND 32

Petitioners further contend that the Supreme Court Office of the Clerk showed prejudice and bias against the Petitioners, when the U.S Supreme Court Clerk failed to file and docket their response in violation of Supreme Court Rules 1, 15, and 32.

The U. S. Supreme Court Clerks Office showed favor towards the Respondents (Legreca and Quinn) by only submitting Respondents response brief, and denied Petitioners brief which was filed on February 18, 2007 to be distributed to the Justices of the U.S. Supreme Court review of the Petitioners Writ of Certiorari on March 16 – 19, 2007.

The Petitioners were denied their 5th and 14th Amendment rights of "Due Process and Equal Protection of

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the laws" as a result of the U.S. Supreme Court Clerks actions.

**CONCLUSION**

It is for these reasons stated in the above paragraphs of the violations of the United States Supreme Court Rules 1, 15, and 16, Petitioners aver that they were denied "Due Process and Equal Protection," by the actions taken by the United States Supreme Court Clerks Office by the United State Supreme Court Rules 1, 15, and 16, which denied Petitioners to have their response brief filed in the United States Supreme Court Clerks Office on February 18, 2007, that was not given review by the United States Supreme Court Justices on March 16 – 19, 2007 of the Petitioners Writ of Certiorari. See Exhibits A, B, and C.

TYREKA S. GIBBS
Notary Public
State of Delaware
My Commission Expires on Nov 17, 2008

Tyreka S. Gibbs
Notary Public
Date: 4/17/2007

Robert E. Brown, Pro Se.

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington DE. 19801
(302) 652-9959

## AFFIDAVIT

This is to certify that Robert E. and Shirley H. Brown, filing of Petition for rehearing of Petition of Writ of Certiorari in the United States Supreme Court pursuant to Supreme Court Rules 44, 1, 2, and Supreme Court Rules 1, 15, and 16, are hereby presented in good faith, and are not filed for the purpose to hinder/delay, and are presented to the United States Supreme Court for good cause.

Robert E. Brown

Robert E. Brown, Pro Se.

Shirley H. Brown

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington DE. 19801
(302) 652-9959

Tyreka Gibbs
Notary Public
Date: 4/1/07

TYREKA S. GIBBS
Notary Public
State of Delaware
My Commission Expires on Nov 17, 2008

**THE**
**SUPREME COURT OF THE UNITED STATES**

Robert E. Brown and Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca and
Quinn Real Estate Services Inc.
Respondents

CERTIFICATE OF SERVICE FOR REHEARING

This is to certify that on this 30th day of March 2007
Theses copies of a Motion for Rehearing were served on the following attorneys.

David L. Finger Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801-11
(302) 884-1666
(302) 884-6766

David M. Souders
Sandra L. Brickel
Weiner Brodwky
1300 19th Street
Suite 725
Washington, DE
20036-1609
(202) 884-2000
(202) 628-2011 Reger

Authur D. Kuhl,, **Esq**
& Rizzo, LLP
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801

Robert E. Brown Pro Se.

Shirley H. Brown, h/w
1024 Walnut Street -
Wilmington DE. 19801
(302) 652-9959

# APPENDICES

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EXHIBIT A

Supreme Court, U.S.
FILED
FEB 18 2007
OFFICE OF THE CLERK

No.2

# IN THE SUPREME COURT OF THE UNITED STATES

**********

Robert E. Brown and
Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

**********

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COUR OF APPEALS FOR THE THIRD CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI

---

**Finger & Slanina, LLC**

David L. Finger
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801-11
(302) 884-6766

David M. Souders
Sandra L. Brickel
Weiner Brodsky

**Rizzo Reger &, LLP**
Author D. Kuhl* Esq.
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302) 652-3611
Attorneys f or Petitioners

---

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Printing

No. 06-943
Title: Robert E. Brown, et ux., Petitioners
v.
Interbay Funding, LLC, et al.
Docketed: January 9, 2007
Lower Ct: United States Court of Appeals for the Third Circuit
Case Nos.: (06-1177)
Decision Date: August 17, 2006
Rehearing Denied: September 18, 2006

| Date | Proceedings and Orders |
|---|---|
| Nov 3 2006 | Petition for a writ of certiorari filed. (Response due February 8, 2007) |
| Jan 23 2007 | Waiver of right of respondent Interbay Funding, LLC to respond filed. |
| Feb 5 2007 | Brief of respondent Lagreca and Quinn Real Estate Services Inc. in oppositi |
| Feb 21 2007 | DISTRIBUTED for Conference of March 16, 2007. |
| Mar 19 2007 | Petition DENIED. |

| Name | Address | |
|---|---|---|
| **Attorneys for Petitioners:** | | |
| Robert E. Brown | 1024 Walnut St<br>Wilmington, DE 19801 | (3 |
| Party name: Robert E. Brown, et ux. | | |
| **Attorneys for Respondents:** | | |
| Bruce E. Alexander<br>Counsel of Record | Weiner Brodsky Sidman Kider PC<br>1300 19th Street, NW, Fifth Floor<br>Washington, DC 20036 | (2 |
| Party name: Interbay Funding, LLC | | |
| Arthur D. Kuhl | 1001 Jefferson Place, Suite 202<br>Wilmington, DE 19801 | (3 |
| Party name: Lagreca and Quinn Real Estate Services Inc. | | |

EXHIBIT C

# Man awarded jury trial in suit vs. no-show priest

By BETH MILLER
The News Journal

WILMINGTON — The defense table remained empty in Courtroom 6B at U.S. District Court early Tuesday morning, the court's deadline for the Rev. Edward Smith to respond to allegations that he had molested an Archmere Academy student in the 1980s.

Smith never showed up.

That meant Navy Cmdr. Kenneth J. Whitwell, 38, won his lawsuit against the Norbertine priest he says sexually abused him during skiing trips to Vermont in 1984 and 1985.

And he won something else, too.

Chief District Judge Sue L. Robinson granted his request for a jury trial to determine what, if any, damages are due him.

"The most important thing is that finally a victim in Delaware gets to have a day in court and tell his story publicly before a jury of his peers," Whitwell said.

That trial is scheduled to begin March 29.

In a Nov. 30 hearing, Robinson dismissed Archmere, the Catholic Diocese of Wilmington and Bishop Michael A. Saltarelli as defendants in the case, saying the statute of limitations had expired. Whitwell plans to appeal that decision.

Smith remained a defendant because he had never

See WHITWELL — A8

Kenneth J. Whitwell said he was molested in the 1980s.

The Rev. Edward Smith taught at Archmere Academy.